

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERNESTO RODRIGUEZ ORDUNEZ,

Petitioner,

v.

No. CV 12-0792 JH/KBM

JAMES LOPEZ, WARDEN,

Respondent.

ORDER FOR CLARIFICATION

Petitioner filed a Motion to Vacate Conviction Pursuant to 28 U.S.C. § 2255. The Court notes that the referenced statute authorizes collateral proceedings against federal criminal sentences. It appears, however, that Petitioner is in custody pursuant to a judgment in a state court criminal proceeding. Petitioner will be directed to submit a short response to this Order addressing his reasons for proceeding under § 2255, or he may file an amended pleading (presumably a petition under 28 U.S.C. § 2254 for a writ of habeas corpus). *Cf. United States v. Roberts*, ---F.3d---, No. 12-3096, 2012 WL 2951540, at *2 (10th Cir. July 20, 2012) (allowing amended § 2255 motion in order to conform with procedural requirements). Form petitions are available on the Court's website. Failure to cure the designated deficiencies within fourteen (14) days from entry of this order may result in dismissal of this proceeding without further notice.

IT IS THEREFORE ORDERED that, within fourteen (14) days from entry of this order, Petitioner file either a short response to this Order addressing his reasons for proceeding under § 2255 or an amended pleading.


UNITED STATES CHIEF MAGISTRATE JUDGE